

**Letter of Findings: 01-20120138**  
**Individual Income Tax**  
**For the Year 2010**

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**I. Residency Issue – Individual Income Tax.**

**Authority:** IC § 6-3-2-1(a); IC § 6-3-1-12; State Election Bd. v. Bayh, 521 N.E.2d 1313 (Ind. 1988); [45 IAC 3.1-1-21](#); [45 IAC 3.1-1-21](#)(a); [45 IAC 3.1-1-22](#); [45 IAC 3.1-1-23](#)(2).

Taxpayer argues that the Department of Revenue erred when it determined that Taxpayer was a resident of Indiana during 2010.

**STATEMENT OF FACTS**

Taxpayer filed a non-resident 2010 Indiana income tax return requesting a refund of Indiana withholding taxes reported on Taxpayer's 2010 W-2. The Department of Revenue ("Department") rejected the refund claim on the ground that Taxpayer was a resident of Indiana during 2010. The Department found that Taxpayer was an Indiana resident because his W-2 reported Indiana wages and because Taxpayer had obtained an Indiana driver's license. Taxpayer disagreed with the decision and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer's representative explained the basis for the protest. This Letter of Findings results.

**I. Residency Issue – Individual Income Tax.**

**DISCUSSION**

Taxpayer concludes that he was not an Indiana resident during 2010, did not receive Indiana source income during that time, and the amount of withholding reported on his 2010 W-2 form should be refunded.

Taxpayer moved to Indiana from Arizona in June 2008. According to Taxpayer, his move to Indiana was dictated by his employer but that the relocation to Indiana was only temporary. Taxpayer states that he never "obtained Indiana residency during his temporary job relocation and an Indiana Part-Year or Full-Year resident income tax return should never have been filed for 2008 or 2009."

Taxpayer further indicates that he never owned any Indiana property during his 14 month stay and that the lease agreement for his apartment was under his employer's name. However, Taxpayer admits that he filed a 2009 Indiana income tax return as a full-time resident of this state and obtained and applied for and obtained an Indiana driver's license.

Taxpayer thereafter moved from Indiana to a foreign country on August 13, 2009. Taxpayer provided copies of his foreign residency permits which were valid from December 2009 until December 2010. However, Taxpayer indicates that he never intended to remain permanently in foreign country. Eventually, Taxpayer moved to Virginia where he now resides.

Taxpayer concludes that because he did not live or work in Indiana during 2010, his employer "erroneously reported Indiana wages and withheld Indiana tax during 2010 due to the fact he worked in Indiana in 2009 and [employer's] pay is headquartered in Indiana."

Indiana imposes a state income tax in the following manner. IC § 6-3-2-1(a) states that, "Each taxable year, a tax at the rate of three and four-tenths percent (3.4[percent]) of adjusted gross income is imposed upon the adjusted gross income of every resident person, and that part of the adjusted gross income derived from sources within Indiana of every nonresident person." (Emphasis added).

Taxpayer maintains that he was not a full-time resident of Indiana during 2010. [45 IAC 3.1-1-21](#)(a) defines the term "resident" and states that an Indiana resident is "Any (a) individual who was domiciled in Indiana during the taxable year, or [] Any individual who (b) maintains a permanent place of residence in this state and spends more than 183 days of the taxable year within this state...." See also IC § 6-3-1-12 ("The term 'resident' includes [] any individual who was domiciled in this state during the taxable year, or [] any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state....")

[45 IAC 3.1-1-22](#) states:

For the purposes of this Act, a person has only one domicile at a given time even though that person maintains more than one residence at that time. Once a domicile has been established, it remains until the conditions necessary for a change of domicile occur.

In order to establish a new domicile, the person must be physically present at a place, and must have the simultaneous intent of establishing a home at that place. It is not necessary that the person intend to remain there until death; however, if the person, at the time of moving to the new location, has definite plans to leave that new location, then no new domicile has been established.

The determination of a person's intent in relocating is necessarily a subjective determination. There is no one set of standards that will accurately indicate the person's intent in every relocation. The determination must be made on the facts present in each individual case. Relevant facts in determining whether a new domicile has been established include, but are not limited to:

- (1) Purchasing or renting residential property
  - (2) Registering to vote
  - (3) Seeking elective office
  - (4) Filing a resident state income tax return or complying with the homestead laws of a state
  - (5) Receiving public assistance
  - (6) Titling and registering a motor vehicle
  - (7) Preparing a new last will and testament which includes the state of domicile.
- (Emphasis added).

The significance of the distinction lies in the effect that domiciliary/residency status has on an individual's state income tax liability. [45 IAC 3.1-1-23](#)(2) states that, "Any person who, on or before the last day of the taxable year, changes his residence or domicile from Indiana to a place without Indiana, with the intent of abiding permanently without Indiana, is subject to adjusted gross income tax on all taxable income earned while an Indiana resident. Indiana will not tax income of a taxpayer who moves from Indiana and becomes an actual domiciliary of another state or country except that income received from Indiana sources will continue to be taxable."

Taxpayer moved from Arizona, to Indiana, to foreign country, to Virginia. Taxpayer's position is that he never established "residency" in either Indiana or foreign country. While living in those two locations, he regarded Arizona as his last permanent "residency" and that this did not change until he finally moved to Virginia. However, "A self-serving statement of intent is not sufficient to find that a new residence has been established." *State Election Bd. v. Bayh*, 521 N.E.2d 1313, 1317 (Ind. 1988).

At the end of the day, Taxpayer had to have a 2010 residency somewhere. "Once acquired, domicile is presumed to continue 'because every man has a residence somewhere, and he... does not lose the one until he has gained one in another place.'" *Id.* (Internal citations omitted). Taxpayer did not have an Arizona residency in 2010 because Taxpayer had left Arizona in 2008 with no intention of returning there. Taxpayer did not have a residency in foreign country because Taxpayer admits there was never any intention of remaining there. Taxpayer did not have a Virginia residency in 2010 because Taxpayer had yet to move to Virginia in 2010. "Establishing a new residence or domicile terminates the former domicile." *Id.* So where was Taxpayer's 2010 residency? It's not in Arizona; it's not in foreign country; it's not in Virginia. Based on the evidence presented, Taxpayer's 2010 residency was in Indiana. The Department's decision to deny Taxpayer a refund of taxes withheld on his behalf was correct.

#### **FINDING**

Taxpayer's protest is respectfully denied.

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